

In the Matter of:

MARVIN WALLAWINE,
Complainant,

vs.

JOHNSON CONTROLS, INC.,
Respondent.

DATE: April 12, 1999

CASE NO.: 1998-STA-36

ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

This case arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982, 49 U.S.C. §§31101 *et seq.* A “Settlement Agreement and Release of All Claims” was submitted for my review and approval on April 6, 1999.

I must determine whether the terms of the agreement are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Department of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko & Yunker v. Georgia Power Co.*, 89-ERA-9, 89-ERA-10 (Sec’y Mar. 23, 1989), slip op. at 1-2.

The parties agree that the settlement is in full satisfaction of all claims for damages and attorney fees that each party may have against the other. The complainant waives any right to reinstatement, as well as any claims, other than state workers’ compensation claims that are not retaliation claims, against the respondent. In turn, the respondent agrees to pay the complainant a specified amount and his attorney a specified amount to cover fees and costs. In addition, respondent agrees to indicate in his records that the complainant was laid off (assuming the acquiescence of the Hanford Atomic Metal Trades Council, (the “Council”)) or resigned (if the Council does not acquiesce to the claimant being “laid off”), provide written instructions to respondent’s employees Timothy Cook and Richard Mallonee to refrain from speaking of the complainant’s work performance or vehicle accidents while employed by the respondent, provide a letter of reference by Michael E. Tenvooren, or his successor, upon request, which contains specific language iterated in the Agreement stating the claimant’s dates of employment with respondent and that his performance as a boiler maker was satisfactory.

Paragraph 4.a. provides that “the terms of this Agreement are to be and will be maintained in a private and confidential manner. . . . Both parties represent that they understand that the terms of this Agreement may become public pursuant to the Freedom of Information Act. . . . [T]he parties may disclose the terms of the Agreement to . . . government agencies for tax purposes . . . and when disclosure is compelled by process of law.”

The Secretary of Labor has held with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act, 5 U.S.C. § 552 (1988) (“FOIA”) “requires

agencies to disclose requested documents unless they are exempt from disclosure.” *Coffman v. Alyeska Pipeline Services Co.*, 96-TSC-5 (ARB June 24, 1996), slip op. at 2-3; *see also Plumlee v. Alyeska Pipeline Services Co.*, 92-TSC-7 (Sec’y Aug. 6, 1993), slip op. at 6; *Davis v. Valley View Ferry Authority*, 93-WPC-1 (Sec’y June 28, 1993), slip op. at 2, n.1 (parties submissions are subject to FOIA); *Ratliff v. Airco Gases*, 93-STA-5 (Sec’y June 25, 1993), slip op. at 2.

The records in this case are agency records and therefore must be made available for public inspection and copying under FOIA. If a member of the public requests inspection and copying, that request requires a response as provided in FOIA. If an exemption applies to the record in this case or any document in it, the Department of Labor would determine whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would be disclosed. Since no FOIA requests have been made, it would be premature to determine whether any FOIA exemptions apply and whether the Department of Labor would exercise its authority to claim an exemption and withhold the requested information. Furthermore, it would be inappropriate to decide such questions in this proceeding. *Timmons v. Mattingly Testing Services, Inc.*, 95-ERA-40 (ARB April 18, 1997). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requesters from denial of such requests, and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. Part 70 (1995).

The confidentiality provisions of the instant agreement provide specific language permitting the complainant to communicate with and provide information to government agencies or to be compelled to provide information pursuant to a legal process. Thus, the confidentiality provisions of this agreement do not violate the Secretary’s prohibition against “gag provisions” in such agreements, which would be against public policy. *Thorton v. Burlington Environmental & Phillip Environmental*, 94-TSC-2 (Sec’y Mar. 17, 1995).

The Secretary requires that all parties requesting settlement approval of cases arising under environmental protection statutes provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or certify that no other such settlement agreements were entered into between the parties. *Biddy v. Alyeska Pipeline Service Co.*, 95-TSC-7 (ARB Dec. 3, 1996), slip op. at 3. As this is the only settlement documentation submitted to me, I find that there were no other settlement agreements arising from the same factual circumstances which formed the basis for this claim.

I therefore find that the agreement, incorporated herein by reference and made part of this Order, is a fair, adequate and reasonable settlement of the complaint. Accordingly, the settlement agreement is hereby APPROVED, and the complaint herein is DISMISSED.

ANNE BEYTIN TORKINGTON
Administrative Law Judge

San Francisco, California